

**quinn emanuel trial lawyers | silicon valley**

555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065-2139 | TEL: (650) 801-5000 FAX: (650) 801-5100

WRITER'S DIRECT DIAL NO.  
**(650) 801-5055**

WRITER'S INTERNET ADDRESS  
**briancannon@quinnemanuel.com**

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**VIA E-MAIL**

Karl A. Rupp  
Kendall Law Group, LLP  
3232 McKinney Ave., Suite 700  
Dallas, TX 75204  
*krupp@kendalllawgroup.com*

Alan D. Albright  
Bracewell & Giuliani LLP  
111 Congress Ave., Suite 2300  
Austin, TX 78707  
*alan.albright@bgllp.com*

Bradley E. Beckworth  
Derek T. Gilliland  
Nix Patterson & Roach, LLP  
205 Linda Drive  
Daingerfield, TX 75639  
*bbeckworth@nixlawfirm.com*  
*dgilliland@nixlawfirm.com*

Bradley J. Benoit  
Heath A. Novosad  
Ralph D. McBride  
Stephen B. Crain  
Bracewell & Giuliani LLP  
711 Louisiana St., Suite 2300  
Houston, TX 77002  
*brad.benoit@bgllp.com*  
*heath.novosad@bgllp.com*  
*ralph.mcbride@bgllp.com*  
*stephen.crain@bgllp.com*

Re: *Troll Busters, LLC v. Roche Diagnostics GMBH, et al.*  
Case No. 11-CV-0056-IEG (WVG) (S.D. Cal.)

Dear Counsel:

We represent the Roche Defendants in the above-captioned matter, and we are writing on behalf of several defendants, including Eurogentec North America Inc., Clontech Laboratories, Inc., Integrated DNA Technologies (IDT), Life Technologies Corporation, Qiagen NV, Thermo

**quinn emanuel urquhart & sullivan, llp**

LOS ANGELES | 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543 | TEL (213) 443-3000 FAX (213) 443-3100  
NEW YORK | 51 Madison Avenue, 22nd Floor, New York, New York 10010-1601 | TEL (212) 849-7000 FAX (212) 849-7100  
SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94111-4788 | TEL (415) 875-6600 FAX (415) 875-6700  
CHICAGO | 500 W. Madison Street, Suite 2450, Chicago, Illinois 60661-2510 | TEL (312) 705-7400 FAX (312) 705-7401  
LONDON | 16 Old Bailey, London EC4M 7EG, United Kingdom | TEL +44(0) 20 7653 2000 FAX +44(0) 20 7653 2100  
TOKYO | NBF Hibiya Bldg., 25F, 1-1-7, Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan | TEL +81 3 5510 1711 FAX +81 3 5510 1712  
MANNHEIM | Erzbergerstraße 5, 68165 Mannheim, Germany | TEL +49(0) 621 43298 6000 FAX +49(0) 621 43298 6100

**Exhibit 1**

Fisher Scientific, Inc., Quanta Biosciences, Inc., Gene Link Inc., EMD, Trilink Biotechnologies, Inc. and Cepheid.

Following up our telephone messages, as you may know, yesterday the Federal Circuit issued *In re BP Lubricants USA Inc.*, Misc. Dkt. No. 960 (copy attached), holding that the Rule 9(b) pleading standard applies to allegations of false marking under 35 U.S.C. § 292 and that facts must be plead with particularity as to each defendant. We believe Troll Busters LLC's current complaint cannot meet the standard set forth by the Federal Circuit. Indeed, the allegations in the complaint against BP rejected by the Federal Circuit mirror the allegations in Troll Busters LLC's complaint in this action:

[R]elator contends that asserting in the complaint that BP is a "sophisticated company and has experience applying for, obtaining, and litigating patents" is enough under Rule 9(b). This court disagrees. That bare assertion provides no more of a basis to reasonably distinguish a viable complaint than merely asserting the defendant should have known the patent expired. Conclusory allegations such as this are not entitled to an assumption of truth at any stage in litigation.

Slip Op. at 8. In light of the recent *BP* decision, we request that Plaintiff withdraw its current complaint. We would not oppose granting Plaintiff time to consider whether it may file an amended complaint, as long as all other dates are on hold. Given that the *BP* decision is directly on point and compels dismissal of the complaint in its current form, we believe it would be a waste of the parties' and court's resources to prepare a motion to dismiss to the current complaint.

Sincerely yours,



Brian C. Cannon

BC:ar

cc: counsel of record

Attachment